

Message Text

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ACTION SS-25

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O 061404Z OCT 75

FM AMEMBASSY NASSAU

TO SECSTATE WASHDC IMMEDIATE 7342

C O N F I D E N T I A L SECTION 1 OF 2 NASSAU 1680

EXDIS

E.O. 11652: GDS

TAGS: CASC (IMPENDING EXECUTION OF MICHAIAH SHOBEK)

SUBJ: SHOBEK CASE

REF: A) STATE 234040, B) NASSAU 1657

1. AS PER REFTTEL, I SOUGHT IMMEDIATE APPOINTMENT WITH MINEXTAFF AND ATTORNEY GENERAL ADDERLEY. ADDERLEY WAS IN A CABINET MEETING ON THURSDAY WHICH LASTED THE ENTIRE DAY AND ACCORDINGLY THE FIRST OPPORTUNITY FOR AN APPOINTMENT OCCURRED SHORTLY AFTER NOON FRIDAY.

2. I REPEATED THE ESSENCE OF REF A REQUESTING A POSTPONEMENT OF THE EXECUTION OF SHOBEK. ADDERLEY INDICATED THE MATTER WOULD BE TAKEN UNDER ADVISEMENT BUT ASKED THAT I SUBMIT THE REQUEST IN WRITING. THIS WE DID. (SEPTTEL)

3. ADDERLEY INDICATED THAT OUR REQUEST PRESENTED "CERTAIN CONSTITUTIONAL PROBLEMS". THE GCOB HAS HAD NO PRIOR EXPERIENCE WITH A REQUEST FOR A POSTPONEMENT IN THE DATE OF AN EXECUTION AND IT WAS NOT PRECISELY CLEAR WHO WAS RESPONSIBLE FOR MAKING THAT DECISION OR HOW IT WOULD BE MADE. NEVERTHELESS, THIS WAS SAID NOT WITH A VIEW TO SUGGESTING THAT A DECISION IN FAVOR OF POSTPONEMENT WAS IMPOSSIBLE ON PURELY TECHNICAL LEGAL GROUNDS, BUT I TOOK IT RATHER AS AN INDICATION OF A QUESTION WHICH THE GOVERNMENT WOULD HAVE TO THINK THROUGH.

4. ADDERLEY THEN TURNED TO THE DATA WHICH HE HAD COMPILED
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IN RESPONSE TO MY EARLIER REQUEST (REF B). HE INDICATED THAT

HE HAD COMPILED SOME OF THE DATA WHICH HE WOULD BE SENDING TO ME IN A LETTER. HOWEVER, OF GREATER INTEREST WAS HIS COMMENT THAT IN RESEARCHING THE DATA HE DISCOVERED THAT ONE BIT OF INFORMATION HE HAD CONVEYED TO ME EARLIER WAS INCORRECT.

5. ADDERLEY STATED THAT HE HAD PREVIOUSLY BELIEVED AND HAD SO INFORMED ME THAT SHOBEK'S APPEAL HAD BEEN REJECTED BY THE APPEALS COURT. IN FACT, HE FOUND IN SEARCHING THE FILES THAT SHOBEK'S ATTORNEY HAD WITHDRAWN THE APPEAL. ADDERLEY READ TO ME FROM NOTES CONTAINED IN THE FILE WHICH REFLECTED THE DISCUSSION AMONG THE THREE MAN APPEALS COURT, THE PRESIDENT OF THE COURT AND SHOBEK'S ATTORNEY, MR. RANDOL FAWKES. WHILE THE NOTES MADE IT CLEAR THAT THE APPEAL HAD BEEN WITHDRAW, THE PRECISE REASONS THEREFORE WERE NOT CLEAR.

6. EMBASSY OFFICER SUBSEQUENTLY CONTACTED MR. FAWKES WHO CONFIRMED THAT APPEAL HAD BEEN WITHDRAWN. ACCORDING TO FAWKES IT HAD BEEN HIS INTENTION TO MAKE AN APPEAL BASED UPON THE MENTAL INCAPACITY OF SHOBEK. HOWEVER, HE HAD NO NEW EVIDENCE AVAILABLE BEYOND THAT WHICH HAD BEEN PRESENTED AT THE TIME OF THE TRIAL AND WAS ADVISED BY THE APPEALS COURT THAT HE ACCORDINGLY DID NOT HAVE A BASIS FOR APPEAL. THE COURT OF APPEALS RECOMMENDED THAT HE WITHDRAW THE APPEAL AND DIRECT IT TO THE MINISTRY OF HOME AFFAIRS TO WHOM THE COMMITTEE ON PEROGATIVES OF MERCY REPORTS. THIS MR. FAWKES DID. EMBASSY OFFICER INQUIRED AS TO WHETHER UNDER THE CIRCUMSTANCES IT WAS STILL POSSIBLE TO FILE AN APPEAL TO THE APPEALS COURT AND HE WAS TOLD THAT THE TIME LIMIT FOR SUCH AN APPEAL HAD EXPIRED, I.E., NO FURTHER APPEAL TO THE APPEALS COURT WAS AVAILABLE.

7. AMBASSADOR SUBSEQUENTLY ALSO CALLED FAWKES AND RECEIVED ESSENTIALLY RECONFIRMATION OF PREVIOUS STATEMENT WITH ONE ADDED POINT WHICH MAY OR MAY NOT BE RELEVANT. ACCORDING TO FAWKES EVEN IN THE ABSENCE OF THE DETAILED FAMILY HISTORY OF INSANITY FAWKES FELT THAT A PERSUASIVE CASE HAD BEEN MADE AS TO SHOBEK'S MENTAL INCAPACITY AND THAT UNDER THE CIRCUMSTANCES HE WOULD NORMALLY NOT HAVE RECEIVED A DEATH PENALTY. HOWEVER, ACCORDING TO FAWKES, WHEN SHOBEK'S MOTHER WAS CALLED TO TESTIFY SHOBEK SO VERBALLY ABUSED HER IN OPEN COURT THAT SHOBEK'S POSITION WITH THE JURY WAS IRREVOCABLY PREJUDICED.

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IM IN THE ABSENCE OF A CAREFUL LEGAL REVIEW OF THE PROCEDURE FOLLOWED BY SHOBEK'S ATTORNEY, IT IS OF COURSE IMPOSSIBLE FOR EMBASSY TO OFFER AN INFORMED INDEPENDENT VIEW AS TO WHETHER THE COURSE FOLLOWED BY MR. FAWKES WAS APPROPRIATE AND/OR THE ONLY ONE OPEN TO HIM AT THE TIME. BASED ON ADDERLEY'S FRAGMENTARY READING OF THE RECORD FROM SHOBEK'S FILE, I WAS STRUCK BY WHAT SEEMED TO MY LAYMAN EARS TO BE GROUNDS FOR A REASONABLE

APPEAL. MOST IMPORTANT WERE THE REFERENCES TO SHOBEK'S IMMEDIATE FAMILY WHICH SUGGESTED THAT MENTAL INSTABILITY, IF NOT INSANITY, IS OR WAS PRESENT IN SEVERAL BROTHERS, SISTERS, UNCLES, ETC. I REPEAT, HOWEVER, I HAVE NO WAY OF KNOWING FROM THIS FRAGMENTARY EVIDENCE WHETHER A VALID CASE FOR APPEAL COULD HAVE BEEN MADE. OBVIOUSLY SHOBEK'S ATTORNEY WAS PERSUADED TO THE CONTRARY.

9. AT THIS POINT IN DRAFTING THIS MESSAGE I RECEIVED A FURTHER CALL FROM ADDERLEY WHO ASKED IF I COULD COME TO SEE HIM IMMEDIATELY (FRIDAY AFTERNOON). I AGREED TO DO SO.

10. ADDERLEY INDICATED THAT THE SHOBEK MATTER POSED A COMPLICATED AND AWKWARD PROBLEM FOR THE GOVERNMENT. HE STATED THAT AS A PRACTICAL MATTER THE GOVERNMENT COULD NOT POSTPONE THE EXECUTION BASED SOLELY ON A REQUEST FROM THE USG. I RESPONDED THAT I DID NOT SEE WHY THAT WAS SO SINCE IT WAS NOT AN UNUSUAL PROCEDURE FOR A GOVERNMENT TO REQUEST A POSTPONEMENT IN THE EXECUTION OF ONE OF ITS NATIONALS. ADDERLEY RESPONDED BY SAYING THAT THE PROBLEM WAS ONE OF DOMESTIC POLITICAL CONCERN. ONCE A POSTPONEMENT WAS GRANTED IT WOULD BE IMPOSSIBLE TO SET ANOTHER DATE FOR EXECUTION. (COMMENT: IT WAS CLEAR WHAT ADDERLEY WAS SAYING. AT THE TIME OF THE EXECUTIONS WHICH TOOK PLACE A YEAR AGO THE PUBLIC PROTEST WAS EXTREMELY VIGOROUS. STREET MARCHES, SPECIAL CHURCH PRAYERS, ALL SORTS OF PUBLIC APPEALS, ETC. WHAT ADDERLEY WAS ANTICIPATING WAS THAT A DELAY FOLLOWED BY A NEW DATE WOULD GENERATE OVERWHELMING DOMESTIC OPPOSITION. AS SUBSEQUENTLY BECAME CLEAR (SEE PARA 11 BELOW) THE GOVERNMENT'S CONCERN SEEMS LESS WITH WHETHER A POSTPONEMENT IS EFFECTED BUT THE BASIS, I.E., WHETHER IT IS SOLELY IN RESPONSE TO U.S. REPRESENTATION OR ON OTHER GROUNDS. END COMMENT.) ADDERLEY STATED THAT IN THE UNITED STATES IT WOULD BE POSSIBLE TO HAVE NOT ONLY ONE POSTPONEMENT BUT MANY AND THEN STILL CARRY

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OUT AN EXECUTION. THIS COULD NOT BE ACCOMPLISHED IN THE BAHAMAS.

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FM AMEMBASSY NASSAU

TO SECSTATE WASHDC IMMEDIATE 7343

C O N F I D E N T I A L SECTION 2 OF 2 NASSAU 1680

EXDIS

11. ADDERLEY THEN WENT ON TO PREFACE HIS NEXT REMARKS BY SAYING THAT HE WAS EXTENDING HIMSELF IN A PERSONAL VEIN AND ENTERING INTO A VERY SENSITIVE DISCUSSION. HE TRUSTED MY COMPLETE DISCRETION. HE THEN WENT ON TO SAY THAT IF THE GOVERNMENT HAD A "LEGAL DOCUMENT" OF SOME SORT UPON WHICH IT COULD BASE A POSTPONEMENT OF THE EXECUTION IT WOULD BE WILLING TO ACT UPON SUCH A DOCUMENT. I SAID I DID NOT UNDERSTAND, WOULD THE MINISTER PLEASE EXPLAIN. ADDERLEY SAID THAT IN VIEW OF THE FACT THAT THE ORIGINAL APPEAL WAS WITHDRAWN A NEW APPEAL MIGHT NOW BE LODGED. THIS WOULD, OF COURSE, BE EXTREMELY UNUSUAL BUT NOT IMPOSSIBLE. IF SUCH A LEGAL ACTION WERE TO BE TAKEN THE GOVERNMENT COULD THEN POSTPONE THE EXECUTION. I ASKED WHAT WOULD THEN OCCUR. HE SAID THERE WERE TWO POSSIBILITIES. EITHER THE APPEAL WOULD BE UPHELD AND THE SENTENCE WOULD BE COMMUTED (PRESUMABLY TO LIFE IMPRISONMENT, BUT THIS WAS NOT EXPLICIT), OR THE APPEAL WOULD BE REJECTED. I ASKED WHAT WOULD HAPPEN IN THAT CASE. ADDERLEY SAID THAT IN HIS VIEW IT WAS ACADEMIC. ONCE THE POSTPONEMENT WAS ACHIEVED THE EXECUTION WOULD NEVER TAKE PLACE. IN SHORT, WHAT ADDERLEY WAS SAYING WAS THAT THE GOVERNMENT WAS LOOKING FOR A LEGAL EXCUSE FOR POSTPONING THE EXECUTION WHICH WOULD THEN SUBSEQUENTLY BE FOLLOWED BY A COMMUTATION OF THE SENTENCE. (COMMENT: OBVIOUSLY ADDERLEY WAS NOT GUARANTEEING THIS PROCESS, BUT IT IS CLEAR THAT HE WAS DOING EVERYTHING BUT OFFERING THE GUARANTEE.)

12. I ASKED ADDERLEY HOW WE SHOULD PROCEED. HE SAID HE THOUGHT THAT FAWKES WAS NOT A GOOD LAWYER. IN ADDITION FAWKES "COULD NOT KEEP HIS POLITICAL PHILOSOPHY AND HIS LEGAL PRACTICE CONFIDENTIAL

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COMPARTMENTALIZED." (COMMENT: IN THE 1967 ELECTION, THE THEN-RULING UBP PARTY WAS TIED BY THE PLP WITH TWO INDEPENDENTS HOLDING THE BALANCE OF POWER. THE KEY MAN WHO JOINED THE PLP WAS NONE OTHER THAN RANDOL FAWKES WHICH THEN PERMITTED THE PLP TO FORM THE GOVERNMENT. FAWKES RECEIVED A CABINET POST. WHEN A SUBSEQUENT ELECTION WAS HELD, THE PLP RODE TO POWER BY A LANDSLIDE MAJORITY AND IN THE PROCESS DUMPED FAWKES.)

ADDERLEY WENT ON TO SAY THAT THE ONE MAN WHO SHOULD HANDLE THIS MATTER WAS EUGENE DUPUCH. (COMMENT: DUPUCH IS CONSIDERED THE SENIOR LAWYER IN NASSAU. HE HAS HELD VARIOUS CABINET POSITIONS IN PREVIOUS GOVERNMENTS AND THOUGH AN FNMM SUPPORTER IS CONSIDERED TO BE A MAN OF UNIMPEACHABLE INTEGRITY.) I ASKED WHETHER THERE WOULD BE ANY DIFFICULTY VIS-A-VIS FAWKES. ADDERLEY SAID THERE WOULD BE NONE SINCE FAWKES' RESPONSIBILITY AS A COURT-APPOINTED DEFENSE ATTORNEY WAS TERMINATED AT THE POINT THE COMMITTEE ON THE PREROGATIVES OF MERCY REJECTED THE APPEAL. I SAID I WOULD CALL DUPUCH, WHOM I KNOW WELL, TO SEE IF HE WOULD HANDLE THE MATTER. ADDERLEY URGED THAT I DO SO SAYING THAT HE HAD TAKEN THE LIBERTY OF HAVING A BRIEF CONVERSATION WITH DUPUCH BASED UPON WHICH HE THOUGHT DUPUCH WOULD BE WILLING TO HANDLE THE CASE. ADDERLEY EMPHASIZED THAT THE GOVERNMENT WOULD HAVE TO HAVE THE LEGAL ACTION IN HAND BY NO LATER THAN MID-DAY, PREFERABLY EARLIER, ON MONDAY.

13. I TALKED TO DUPUCH FRIDAY EVENING AND WE SET UP A MEETING AT HIS HOUSE FOR SATURDAY MORNING. THE HEAD OF MY CONSULAR SECTION, MR. STEPHEN VITALE, ACCOMPANIED ME. I DESCRIBED THE CASE TO DUPUCH. IT WAS HIS CONCLUSION THAT THE IMMEDIATE LEGAL ACTION WHICH SHOULD BE TAKEN WAS TO REQUEST THE COURT OF APPEALS TO GRANT AN EXCEPTIONAL HEARING. (COMMENT: THERE IS APPARENTLY A SIX-WEEK PERIOD WITHIN WHICH AN APPEAL MUST BE FILED. ACCORDINGLY AN EXCEPTION TO THAT TIME PERIOD IS WHAT DUPUCH IS PROPOSING.) THE COURT OF APPEALS WILL NOT MEET UNTIL NOVEMBER AND THUS WILL NOT IN FACT EVEN PASS UPON WHETHER IT IS PREPARED TO GRANT THE EXCEPTION AND TO HEAR THE SUBSTANTIVE APPEAL UNTIL THAT TIME. HOWEVER, THIS WILL SERVE THE PURPOSE OF HAVING THE LEGAL ACTION UPON WHICH THE GOVERNMENT CAN POSTPONE THE EXECUTION.) DUPUCH MADE IT CLEAR THAT HE HAD NO WAY OF KNOWING WHETHER THE COURT WOULD GRANT THE EXCEPTION AND FURTHER THAT IF IT GRANTED THE EXCEPTION WHETHER IT WOULD FIND THE APPEAL PERSUASIVE. DUPUCH, TOGETHER WITH ONE OF HIS ASS-
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OCIATES, MR. KEITH DUNCOMBE, ARE AT THIS MOMENT DRAWING UP THE PAPERS WHICH IT WILL THEN BE NECESSARY FOR SHOBEK TO SIGN. VITALE DOES NOT ANTICIPATE ANY PROBLEM WITH OBTAINING SHOBEK'S SIGNATURE. IF THAT PROVES TRUE, WE SHOULD HAVE THE LEGAL PAPERS FILED BY THE FIRST THING ON MONDAY MORNING AND THUS HOPEFULLY SET ENTRAIN THE SERIES OF ACTIONS DESCRIBED ABOVE.

14. I DID BROACH TO DUPUCH THE QUESTION OF FEES FOR HIS SERVICE. DUPUCH STATED THAT HE WOULD AS A MATTER OF GOODWILL WITH THE EMBASSY DRAW UP THE INITIAL PAPERS REQUESTING THE APPEALS COURT TO GRANT AN EXCEPTION ON THE TIMING WITHOUT CHARGE. IF THERE IS A SUBSEQUENT NEED TO DRAW UP A DETAILED SUBSTANTIVE APPEAL THEN DUPUCH SAID WE WOULD HAVE TO SIT DOWN AND DISCUSS FINANCIAL ARRANGEMENTS. I SHOULD NOTE IN THIS REGARD THAT

DUPUCH IS A VERY EXPENSIVE ATTORNEY AND I HAVE NO SUGGESTIONS AT THIS POINT AS TO HOW A FEE WOULD BE MET IF AND WHEN THAT IS REQUIRED.

15. COMMENT: IT IS FASCINATING TO SPECULATE UPON WHAT IT WAS THAT PROMPTED ADDERLEY TO ACT AS HE DID. I THINK THE EXPLANATION IS SEVERAL-FOLD. FIRST OF ALL, ADDERLEY HAS BY NATURE A HIGHLY LEGALISTIC MIND. HE VIEWS HIMSELF AS BEING METICULOUS ABOUT ADHERING TO THE LAW. IT WAS PERFECTLY CLEAR THAT HE DID NOT PERSONALLY FEEL THAT SHOBEK HAD THE MOST ASTUTE LEGAL CAPABILITIES WORKING FOR HIM. IN SHORT, I THINK THAT ADDERLEY BELIEVED THAT EITHER FAWKES DID NOT DO AS WELL AS HE MIGHT HAVE IN THE TRIAL OR, MORE LIKELY, THAT HE SHOULD NOT HAVE WITHDRAWN THE APPEAL. SECONDLY, AND RELATED, SINCE FAWKES WAS A COURT APPOINTED ATTORNEY I SUSPECT ADDERLEY FEELS THAT THE GCOB, WHILE IT PROBABLY TECHNICALLY HAS NO RESPONSIBILITY FOR HOW FAWKES CONDUCTED THE DEFENSE, NEVERTHELESS SHOULD BE ABOVE REPROACH. THIRDLY, I SUSPECT THAT ADDERLEY MAY FEEL SOME PERSONAL LIABILITY. FOR EXAMPLE, HE SITS ON THE COMMITTEE FOR THE PREROGATIVE OF MERCY AND ONE WOULD THINK THAT AS ATTORNEY GENERAL HE WOULD PLAY A KEY ROLE. YET, AS HE SUBSEQUENTLY HAD TO ADMIT TO ME HE WAS NOT AWARE OF IMPORTANT FACTS OF THE CASE, MOST PARTICULARLY THAT THE APPEAL HAD NOT BEEN REJECTED BUT RATHER WITHDRAWN. FINALLY, I SUSPECT ADDERLEY IS PERSONALLY OPPOSED TO CAPITAL PUNISHMENT. HE DID NOT SAY SO TO ME BUT THAT IS MY IMPRESSION. THIS, DESPITE THE FACT THAT HE VIEWS THE RECORD AS SHOWING QUITE PLAINLY THAT SHOBEK

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IS A PSYCHOPATHIC MURDERER. IN FACT THE PSYCHIATRIST FROM THE NASSAU ASYLUM "SANDYLANDS" HAS STATED THAT GIVEN THE OPPORTUNITY SHOBEK WOULD UNDOUBTEDLY KILL AGAIN. IT IS ALSO WORTH NOTING THAT IN MY CONVERSATION WITH DUPUCH HE INDICATED THAT ADDERLEY HAD ALSO CONFIDED TO HIM THAT THE GOVERNMENT DID NOT FEEL FROM A POLITICAL POINT OF VIEW IT COULD POSTPONE THE EXECUTION SOLELY BASED ON A USG REQUEST, BUT THAT HE AND THE PRIMIN WERE CLEARLY WILLING TO TAKE SUCH ACTION IF A NEW LEGAL APPEAL COULD BE FILED. THIS IS WHERE MATTERS STAND AT THIS TIME.

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